IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 456 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KALABHAI DIPABHAI PARMAR - Appellant(s)
Versus
D M CHAUHAN & 1 - Defendant(s)

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Appearance :
MR MTM HAKIM for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
MR MD PANDYA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal, Vadodara passed in M.A.C.P. No.603 of 1984 dated 20th October, 1987.

2.0 The brief facts of the case are that on 13.09.1982, when the present appellant was proceeding towards Vadodara from Bhimpura driving a truck No. GTK 3858, the said truck met with an accident caused by a bus driven by opponent No.1 and owned by opponent No.2. On account of the

said accident, the appellant received serious bodily injuries, and hence, he filed a petition claiming an amount of Rs.40,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of the appellant before the Tribunal that on the day of incident when he was proceeding towards Vadodara driving the truck, the said truck met with an accident on account of the negligence on the part of the opponent No.1. In support of his case the appellant has placed reliance on evidence of one witness-Kalabhai Dipabhai Parmar. The appellant has also placed reliance on a judgment of the Tribunal passed in M.A.C.P. No.218 of 1983 arising out of the same accident. In that judgment the Tribunal held that the width of the tar road at the place of incident was about 12

feet, and hence, if the appellant and opponent No.1 had taken proper care at the place of diversion, the accident in question could not have taken place. The Tribunal, therefore, held that the appellant as well as opponent No.1 both were negligent to the extent of 30 per cent and 70 per cent respectively for the accident in question. The aforesaid judgment has not been challenged by the opponents. Therefore, the Tribunal is justified in holding that the appellant is entitled for compensation.

3.1 Learned Advocate for the appellant has raised a contention that in view of the decision of this Court in the case of ***"Punambhai Khodabhai Parmar Vs. G.Kenel Construction and Another"*** reported in 1984 ACJ 739 and in the case of ***"Union of India and Another Vs. Ashwathanarayan S. Sharma"*** reported in 1993(1) GLH 1044 the Tribunal ought to have assessed the disability sustained by the appellant at 100 per cent of the body as a whole, instead of 10 per cent of the

body as a whole as is held by the Tribunal. In support of his case, the appellant has placed reliance on evidence of Dr. Ashok Kumar Jagnath Vaishnav (Exh.25) and case papers produced at Exh.26. Dr. Ashok Kumar-in his evidence has admitted that the appellant has sustained impairment and loss of function of right knee to the extent of 20 per cent. However, he admitted that the said disability would not come in daily work. Therefore, the Tribunal is justified in holding the disability sustained by the appellant at 10 per cent of the body as a whole. It may also be noted that the appellant has not produced any documents on record to show that the disability sustained by him is more than 10 per cent of the body as a whole. As regards the two decisions relied upon by the learned Advocate for the appellant, the first decision pertains to Workmen's Compensation Act, 1923 and the facts of the second decision are different from the present one, and hence, the ratio laid down in both the decisions mentioned above shall not

apply in the present case.

3.2 While considering the aspect of compensation, the Tribunal has taken into consideration the medical and other evidence available on record. Looking to the nature of injuries and disability sustained by the appellant, the period of hospitalization and considering the fact that he was earning Rs.600/- per month, the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellant for enhancement of the amount of compensation. I am, therefore, in complete agreement with the reasonings given and the findings arrived at by the Tribunal and do not find any reason to interfere in this appeal.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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